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AGRICULTURAL PRESERVATION RESTRICTION PROGRAM

Program Summary

The Agricultural Preservation Restriction (APR) Program was established by the Legislature in 1977 in response to the rapid loss of the Commonwealth's limited farmland resources to non-agricultural uses. Since its first acquisition in 1980, the program has protected 603 farm properties totaling over 52,700 acres in 148 towns across the Commonwealth. The program's accomplishments to date make it one of the most successful state farmland protection programs in the country.

The APR Program is a voluntary program which is intended to offer a non-development alternative to farmers and other owners of "prime" and "state important" agricultural land who are faced with a decision regarding the future use and disposition of their farms. Towards this end, the program offers to pay farmers the difference between the "fair market value" and the "agricultural value" of their farmland in exchange for a permanent deed restriction which precludes any use of the property that will negatively impact its agricultural viability.

The state's investment in the APR Program benefits farmers, the state's agricultural industry, the state and local economies, consumers and the general populace in a number of important ways.

- The program works to bolster the state's $553,000,000 agricultural industry by helping to keep farms in active commercial use, and by sending an important signal to the industry and its farmers that Massachusetts is serious about encouraging a strong and viable agricultural economy.

- Farmers whose land is accepted into the program are able to realize equity from their land without being forced to sell their farms for development purposes. The equity is often reinvested back into the protected farm by way of the purchase of more land, equipment or buildings and through the retirement of farm debt. This reinvestment serves to make participating farms more efficient and economically sound, to the benefit of consumers and the state's agricultural industry.

- A major portion of APR participants spend all or most of their APR funds locally, "thereby creating a link between private and public benefit, and adding credence to the assertion that APR dollars benefit more than just individual farmers and, in reality, work to stimulate local and state economies."

- The APR Program often represents the only means by which farmers are able to plan their estates to allow for the transfer of ownership of their farms to their children. By reducing the value of restricted farmland to its agricultural value, gift or inheritance taxes can be greatly reduced, thereby eliminating the need for second generation farmers to sell their farmland in order to pay said taxes.

- APR restricted farmland represents an opportunity for young farmers just entering the business and other farmers in need of additional land to purchase affordable farmland. The program serves to stabilize farmland values and guarantee the long-term availability of farmland. This factor is especially important in areas with escalating land values and is critical for farmers who rent a large percentage of the land that they farm.

- By protecting farmland, the APR Program works to secure a continued high quality of life for Massachusetts residents. Farmland not only contributes to the scenic beauty of the state, but it provides for clean air and water, wildlife habitat, and recreational opportunities.

The APR Program has been very successful in encouraging towns to participate in the funding of APR acquisitions. Close to one-half of the Program's APRs are co-held by towns at a savings to the Commonwealth of over $11 million. In addition, the Program works closely on a regular basis with a number of non-profit land conservation organizations (e.g. American Farmland Trust, The Trustees of Reservations, Franklin Land Trust, Berkshire Natural Resource Council, Valley Land Fund, Deerfield Land Trust, Sheffield Land Trust, Winding River Land Conservancy), which serve to promote the program with local farmers and facilitate APR acquisitions through fund raising and the pre-acquisition of APRs. Finally, a great deal of emphasis has been given to encouraging cooperative acquisition projects with other state open space protection programs.

Summary of Acquisition Criteria

Criteria for Eligibility (Statutory: M.G.L. 132A, s.11A)

- Land must be "actively devoted" to agricultural or horticultural uses as defined in Sections 1 - 5, inclusive, of Chapter 61A for at least two immediately preceding tax years.

- Minimum of 5 acres in size.

Criteria for Selection

Priority Criteria:

- Suitability and productivity of land for agricultural use based on its soil classification, physical features and location.
- Degree of threat to the continuation of agriculture on project land due to contingencies such as, but not limited to the owner's death, retirement, financial difficulties, development pressure, or to the insecurity entailed in the use of rented lands.

- Degree to which, if the land were subject to agricultural preservation restriction, it is of a size and composition to be economically viable for agricultural purposes and the likelihood the land will remain in agricultural use for the foreseeable future.

Other Considerations:

- Significance of the project in the development of a continuing program of acquiring agricultural preservation restrictions in the vicinity of the project (an emphasis is given to creating "blocks" of protected farmland).

- Compatibility with the recommendations and comments of a municipality and the degree to which the affected municipality is willing to assist in providing funds, legal services, and enforcement pursuant to M.G.L. c. 132A, s. 11A as amended.

- Degree to which the project would accomplish collateral environmental objectives, such as protection of water resources or flood plains and preservation of historical, open space, or aesthetic amenities.

- Extent to which the acquisition cost of the agricultural preservation restriction is justifiable in relation to the anticipated benefits thereof.

APR Acquisition Process

The acquisition of APRs is overseen by the Agricultural Lands Preservation Committee (ALPC), which is chaired by the Commissioner of Food and Agriculture. Other members of the ALPC include the Secretary of Environmental Affairs (or designee), the Commissioner of the Department of Communities and Development (or designee), the chairman of the Board of Agriculture, and four citizen members appointed by the Governor, two of whom must be owners and operators of farms in the Commonwealth.

Summary of Application Process

1. Voluntary application.

2. Applications are often solicited in areas where "APR blocks" have been initiated.

3. Application includes town comment and recommendation section.

4. Applicant property is field inspected by APR field representative.

5. APR staff meets to review application and formulate recommendation for the ALPC.

6. ALPC, following consideration of staff recommendation, votes to:

    a. Reject application (application does not qualify under above criteria).

    b. Give application "little likelihood" status (application does not fit the Program's goals at this time; limited significance.

    c. Nominate application for appraisal.

7. Appraisals of nominated properties are undertaken by independent appraisers under contract to DFA:

a. Fair market value appraisal to determine highest market value of property (usually for development purposes).

b. Agricultural or restricted value appraisal to determine highest value of property for agricultural or restricted purposes only.

c. Review appraisal to review the FMV and Ag. appraisals and set APR value (difference between the FMV and Ag. value).

8. APR acquisition price is negotiated by staff. ALPC has a policy of capping APRs at $10,000 per acre. If appraised value exceeds cap, difference must be made up through bargain sale by owner or local contributions.

9. ALPC considers staff recommendation regarding terms of acquisition (acquisition price, conditions of purchase, Town contribution) and "final votes" application (commits funding).

10. Title review is undertaken by attorneys under contract to DFA.

11. Legal papers are drafted and signed by all parties to the APR.

12. Once funding is allocated and all required state and local approvals, and discharge or subordination of liens and mortgages discovered by the title review are obtained, the APR is recorded as a permanent encumbrance on the subject property.

APR Monitoring and Enforcement Program

The APR Program was one of the first state farmland protection programs to initiate a comprehensive monitoring and enforcement program to ensure that its restrictions are being adhered to and to identify problems that represent a potential threat to the present and future agricultural integrity of APR protected farms.

Beginning in 1990, the program entered into contracts with a number of monitoring agents who were given the responsibility of documenting the condition of protected farms, at the time of the closing of the APR, through the creation of a comprehensive baseline document for each APR protected property. In addition, the APR monitors have been placed on a schedule to re-inspect each APR property on a bi-annual basis to ensure APR compliance.

In an effort to improve communications between the APR Program and APR property owners, with the hope of reducing the potential for violations, the program generates a twice a year APR Newsletter. This publication includes information on recent APR acquisitions, policy updates, articles concerning APR violations, and program contact information.

Finally, when a violation of an APR is discovered, the APR Program has in-house legal counsel who, in cooperation with the State's Office of the Attorney General, develop and implement a strategy to attempt to first work with the landowner to correct the violation and, if necessary, to initiate legal action to force compliance.